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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 CYNTHIA L. CZUCHAJ, individually  
12 and on behalf of all others similarly  
13 situated, et al.,  
14 Plaintiffs,  
15 v.  
16 CONAIR CORPORATION, a Delaware  
17 corporation,  
18 Defendant.

Case No.: 3:13-cv-01901-BEN-RBB

**ORDER GRANTING IN PART  
MOTION TO SEVER AND  
TRANSFER CERTAIN CLAIMS**

19 Defendant Conair Corporation filed a Motion to Sever and Transfer Certain  
20 Claims. (ECF No. 290.) Defendant seeks the following orders: (1) to sever individual  
21 claims from class claims; (2) to sever the California subclass count from the New York  
22 subclass count; (3) to transfer the New York subclass count to the Southern District of  
23 New York or the District of Connecticut; and (4) to transfer the individual claims to  
24 their respective Federal District Courts. (*Id.*) Plaintiffs oppose the Motion. (ECF No.  
25 299.)

26 As explained below, the Court severs and transfers the non-California individual  
27 claims. The Court declines to sever the California subclass claim from the New York  
28 subclass claim.

## BACKGROUND

This action arises from two alleged defects in Defendant Conair's Infinity Pro 1875 Watt hair dryer, a defect to the strain relief in the product's cord and a defect to coils in the barrel of the product. Plaintiffs argue that all hair dryers suffered from the coil defect, even if the hair dryers first failed due to problems with the cord. There are four named plaintiffs: Plaintiffs Czuchaj, Carter, McConnell, and Mundy. Czuchaj is the only California resident. Carter resides in New York, McConnell resides in Michigan, and Mundy resides in Pennsylvania. The hair dryers of Czuchaj and McConnell had cord failures, while the hair dryers of Carter and Mundy failed because of the coil issue.

On March 30, 2016, the nationwide damages class was decertified, and on May 24, 2016, the nationwide injunctive relief class was decertified. (ECF Nos. 248, 280.) After decertification and summary judgment, by the Court's count, twenty-seven claims remain, only two of which have been certified for a class action. The two class claims are a California damages subclass for violation of the Song-Beverly Warranty Act, represented by Plaintiff Czuchaj, and a New York damages subclass for violation of New York General Business Law section 349, represented by Plaintiff Carter. There are twenty-five individual claims asserted under five states' laws: California, New York, Pennsylvania, Ohio, and Michigan. Each plaintiff individually asserts claims based on strict products liability, implied warranty, and consumer protection laws.<sup>1</sup>

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<sup>1</sup> Based on the Second Amended Complaint and the history in this case, the following individual claims remain:

By Plaintiff Czuchaj: (1) breach of implied warranty under California law; (2) strict products liability for defective design or manufacture under California law; (3) strict products liability for failure to warn under California law; and (4) violation of the Magnuson-Moss Warranty Act ("MMWA").

1 Defendant seeks to sever and transfer Plaintiffs Mundy and McConnell's  
2 individual claims because it would be inefficient, cumbersome, and prejudicial to try  
3 their cases with the other claims. Defendant asserts that their claims are factually and  
4 legally different than the class claims. Defendant requests, but does not address,  
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8 By Plaintiff Carter: (1) breach of implied warranty under New York law; (2) strict  
9 products liability for defective design or manufacture under New York law; (3) strict  
10 products liability for failure to warn under New York law; and (4) violation of the  
11 MMWA.

12 By Plaintiff Mundy: (1) breach of implied warranty under Pennsylvania law; (2) strict  
13 products liability for defective design or manufacture under Pennsylvania law; (3) strict  
14 products liability for failure to warn under Pennsylvania law; (4) breach of the  
15 Pennsylvania Unfair Trade Practices and Consumer Protection Act; and (5) violation of  
16 the MMWA.

17 By Plaintiff McConnell: (1) breach of implied warranty under Michigan law; (2) strict  
18 products liability for defective design or manufacture under Michigan law; (3) strict  
19 products liability for failure to warn under Michigan law; (4) violation of the Michigan  
20 Consumer Protection Act; (5) violation of the Michigan Product Liability Act; (6) breach  
21 of implied warranty in tort under Ohio law; (7) violation of the Ohio Product Liability  
22 Act; (8) violation of the Ohio Statutory Inadequate Warning Law; (9) breach of implied  
23 warranty under Ohio law; (10) strict products liability for defective design or  
24 manufacture under Ohio law; (11) strict products liability for failure to warn under Ohio  
25 law; and (12) violation of the MMWA.

26 The Court expresses no opinion whether all of these claims could be maintained or  
27 whether any are duplicative of others. The only claims dismissed from this action have  
28 been Plaintiffs' claims under California's Consumer Legal Remedies Act and Unfair  
Competition Law. (ECF No. 251.) When the Court declined to certify a class for strict  
products liability for design defect and failure to warn, those claims remained as  
individual claims alleged on behalf of each Plaintiff. Similarly, when the Court  
decertified the nationwide class for common law implied warranty claims and violations  
of the MMWA, those claims survived as individual claims of each Plaintiff. *See Smith v.*  
*CRST Van Expedited, Inc.*, No. 10-cv-1116, 2012 WL 5873701, at \*3 (S.D. Cal. Nov. 20,  
2012) ("[T]hat claim was decertified, and thus only remains as an individual claim.").

1 severance of Plaintiffs Czuchaj and Carter's individual claims and transfer of Carter's  
2 claims to the Southern District of New York or the District of Connecticut.

3 Plaintiffs agree to sever the individual claims of Mundy and McConnell but do  
4 not consent to transfer. They believe that Mundy and McConnell's claims should be  
5 stayed until completion of the class trial.

6 Defendant also requests severance of the California subclass from the New York  
7 subclass and transfer of the New York subclass to an appropriate district court.  
8 Defendant argues severance is necessary to avoid prejudice to Conair and promote  
9 judicial economy. Plaintiffs reject Defendant's contentions.

## 10 **DISCUSSION**

### 11 **I. Defendant's Motion to Sever**

#### 12 **A. Legal Standard Governing Severance**

13 A court has broad discretion to sever claims under Federal Rule of Civil  
14 Procedure 21, which permits a court to "sever any claim against a party." Fed. R. Civ.  
15 P. 21. In considering whether to sever a claim under Rule 21, the court considers the  
16 following factors: (1) whether the claims arise out of the same transaction or  
17 occurrence; (2) whether the claims present some common questions of law or fact; (3)  
18 whether settlement of the claims or judicial economy would be facilitated; (4) whether  
19 prejudice would be avoided if severance were granted; and (5) whether different  
20 witnesses and documentary proof are required for the separate claims. *Anticancer, Inc.*  
21 *v. Pfizer Inc.*, No. 11-cv-107, 2012 WL 1019796, at \*1 (S.D. Cal. Mar. 26, 2012).

#### 22 **B. The Court Severs the Non-California Individual Claims**

23 Severance of Plaintiffs Carter, McConnell, and Mundy's individual claims under  
24 the laws of New York, Ohio, Michigan, and Pennsylvania will promote judicial  
25 economy and avoid prejudice to both parties. Although Plaintiffs' claims all arise from  
26 alleged defects to the same hair dryer, the facts differ regarding each Plaintiff's use (and  
27 potential misuse) of the product and resulting damages. There is a risk that a jury might  
28 conclude that one plaintiff's misuse of a product bars all of the other plaintiffs'

1 individual claims. Similarly, “one plaintiff, despite a weaker case of causation, could  
2 benefit merely through association with the stronger plaintiff’s case.” *Rubio*, 2016 WL  
3 3097292, at \*6. Furthermore, the numerous individual claims raise different legal  
4 issues arising under different state laws. Trying the claims together would require the  
5 Court to decide issues of foreign law. It would also require the jury to apply four  
6 different fact patterns to jury instructions on five state’s laws. This would be  
7 cumbersome, inefficient, confusing to the jury, and potentially prejudicial to both  
8 parties.

9 The Court finds that the similarities in the claims are not enough to overcome the  
10 risk of jury confusion and prejudice. *Id.* at \*5 (“[T]he Court need not decide whether  
11 Plaintiffs’ claims are factually similar enough to constitute the same transaction or  
12 occurrence, because even if their claims did [arise from the same transaction and  
13 occurrence and involve common questions of fact and law], the interests of fairness and  
14 efficiency would dictate that the Court exercise its discretion to sever Plaintiffs’  
15 claims.”). Plaintiffs’ rights will not be prejudiced by severance, as each is free to  
16 proceed with her own individual claims. *Id.* at \*6. Therefore, the Court exercises its  
17 discretion to sever the non-California individual claims. As explained below, the Court  
18 transfers these claims to their respective Federal District Courts.

19 **C. The Court Declines to Sever the California Subclass Claim from the New**  
20 **York Subclass Claim**

21 The Court denies Defendant’s Motion to the extent it seeks to sever the  
22 California subclass count from the New York subclass count. The crux of this case has  
23 always been about the class allegations. Moreover, because Plaintiffs allege that the  
24 coil defect was present in all hair dryers, regardless of whether that defect actually  
25 manifested, the parties will have to present the same expert evidence in both cases.  
26 Further, instructing the jury on six claims under two state’s laws—with only one claim  
27 arising under foreign law—does not pose the same risk of confusion and prejudice that  
28 could have resulted from asking the jury to resolve twenty-seven claims under five

1 state's laws. Thus, the Court will maintain jurisdiction over the California law-based  
 2 claims—the class and individual claims—and the New York subclass claim.

## 3 **II. Defendant's Motion to Transfer**

### 4 **A. Legal Standard Regarding Transfer**

5 District courts have broad discretion to transfer a case to another court. *Hawkins*  
 6 *v. Gerber Prods. Co.*, 924 F. Supp. 2d 1208, 1212 (S.D. Cal. 2013). A court may  
 7 transfer an action to a different district court “[f]or the convenience of the parties and  
 8 witnesses, in the interest of justice,” if the case could have originally been brought in  
 9 the transferee court. 28 U.S.C. § 1404(a). The transferee court must have subject  
 10 matter jurisdiction and be a proper venue for the action, and the defendant must be  
 11 subject to personal jurisdiction in the district. *Rubio v. Monsanto Co.*, No. CV 15-  
 12 07426, 2016 WL 3097292, at \*7 (C.D. Cal. Mar. 24, 2016).

13 In determining whether transfer would serve “the convenience of the parties and  
 14 witnesses” and “the interest of justice,” courts look to the following factors: (1) the  
 15 plaintiffs’ choice of forum; (2) the extent to which there is a connection between the  
 16 plaintiffs’ causes of action and this forum; (3) the convenience of parties; (4) the  
 17 convenience of witnesses, (5) the availability of compulsory process to compel  
 18 attendance of unwilling non-party witnesses; (6) the ease of access to sources of proof;  
 19 (7) the existence of administrative difficulties resulting from court congestion; (8)  
 20 whether there is a “local interest in having localized controversies decided at home”; (9)  
 21 whether unnecessary problems in conflict of laws, or in the application of foreign law,  
 22 can be avoided; and (10) the unfairness of imposing jury duty on citizens in a forum  
 23 unrelated to the action. *See Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1156 (S.D. Cal.  
 24 2005).

### 25 **B. The Court Transfers the Non-California Individual Claims**

26 The Court transfers Plaintiffs Carter, McConnell, and Mundy’s individual claims  
 27 to the U.S. District Courts for the Western District of New York, Eastern District of  
 28 Michigan, and Middle District of Pennsylvania, respectively. The Court explains below

1 why the jurisdictional requirements for filing actions in those courts are satisfied and  
2 why the factors weigh in favor of transfer.

3 1. Carter's Case Could Have Been Filed in the Western District of New  
4 York

5 Carter could have brought her claims in the U.S. District Court for the Western  
6 District of New York. First, Defendant is subject to personal jurisdiction in the Western  
7 District because it supplies goods within the District and Carter's cause of action "arises  
8 from" that act.<sup>2</sup> N.Y. C.P.L.R. § 302(a) (New York long-arm statute). According to  
9 the Second Amended Complaint ("SAC"), Defendant sold its products in the Western  
10 District, Carter purchased her hair dryer from a store in the District, and Carter was  
11 subsequently injured by the hair dryer. SAC ¶ 23; *Stephan v. Babysport, LLC*, 499 F.  
12 Supp. 2d. 279, 286 (E.D.N.Y. 2007) ("Proof of one transaction, though the defendant  
13 never entered New York, may be sufficient to confer jurisdiction 'so long as the  
14 defendant's activities were purposeful and there is a substantial relationship between  
15 the transaction and the claim asserted.'").

16 Second, venue is proper in the Western District because, pursuant to 28 U.S.C. §  
17 1391(b)(1) and (c)(2), venue is proper for corporations in any district in which a court  
18 has personal jurisdiction over that corporation.

19 Third, the Western District of New York would have federal question subject  
20 matter jurisdiction because Carter pled a violation of the Magnuson-Moss Warranty  
21 Act, 15 U.S.C. § 2301, a claim arising under federal law. *See Grable & Sons Metal*  
22 *Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005) ("[F]ederal question  
23 jurisdiction is invoked by and large by plaintiffs pleading a cause of action created by  
24 federal law.")

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28 <sup>2</sup> Further, Defendant does not appear to contest that it would be subject to personal  
jurisdiction in New York.



1                   2. McConnell's Case Could Have Been Filed in the Eastern District of  
 2                   Michigan

3                   Similarly, McConnell could have brought her claims in the U.S. District Court  
 4 for the Eastern District of Michigan. The district court has personal jurisdiction over  
 5 Defendant under Michigan's long-arm statute because it "caus[ed] . . . consequences to  
 6 occur in the state resulting in an action for tort."<sup>3</sup> Mich. Comp. Laws § 600.715.  
 7 According to the SAC, McConnell, a Michigan citizen residing within the Eastern  
 8 District, suffered property damage when her Conair hair dryer failed. SAC ¶ 22.  
 9 Again, venue in the Eastern District is proper under 28 U.S.C. § 1391(b)(1) because the  
 10 court has personal jurisdiction over Defendant. And, the court would have subject  
 11 matter jurisdiction because McConnell pled a federal law cause of action: violation of  
 12 the Magnuson-Moss Warranty Act.

13                   3. Mundy's Case Could Have Been Filed in the Middle District of  
 14                   Pennsylvania

15                   Mundy's claims could have been brought in the U.S. District Court for the  
 16 Middle District of Pennsylvania. The district court will have personal jurisdiction over  
 17 Mundy's claims.<sup>4</sup> The Pennsylvania long-arm statute permits the exercise of personal  
 18 jurisdiction over a defendant that transacts business in the Commonwealth or that  
 19 causes harm or tortious injury by an act in the Commonwealth. *See* 42 Pa. Cons. Stat. §  
 20 5322. Here, the SAC alleges that Mundy, a resident of the Middle District, purchased  
 21 her Conair hair dryer at a Wal-Mart retail store in the Middle District and was  
 22 subsequently injured when it failed. SAC ¶ 21. As explained above, venue is proper  
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26 <sup>3</sup> Again, Defendant does not appear to dispute that it would be subject to personal  
 27 jurisdiction in the Eastern District of Michigan.

28 <sup>4</sup> Defendant does not contest that it would be subject to personal jurisdiction in the  
 Middle District of Pennsylvania.



1 under 28 U.S.C. § 1391(b)(1), and subject matter jurisdiction exists because McConnell  
 2 pled a violation of the Magnuson-Moss Warranty Act.

3 4. The Relevant Factors Weigh in Favor of Transferring Plaintiffs' Claims  
 4 to their Respective District Courts

5 As noted, courts consider a variety of factors in determining whether a transfer  
 6 would serve “the convenience of the parties and witnesses” and “the interest of justice.”  
 7 28 U.S.C. § 1404. Here, these factors weigh in favor of transfer. Importantly, there is  
 8 no connection between Carter, McConnell, and Mundy’s cases and this forum. Their  
 9 claims did not arise in this forum and there is no evidence related to their claims in this  
 10 forum. The parties will have to travel across the country to this Court to try their case.  
 11 Any witnesses specific to their individual claims will also have to travel to this forum.  
 12 Although a plaintiff’s choice of forum is a factor to consider, that choice is accorded  
 13 less weight when the plaintiff does not reside in the forum or “where the action has little  
 14 connection with the chosen forum.” *Saleh*, 361 F. Supp. 2d at 1157.

15 This is not a “localized controversy” that the Southern District of California has  
 16 an interest in having decided here. “Plaintiffs are not residents of this district, the  
 17 alleged acts . . . that underlie plaintiffs’ claims did not occur in this district, and  
 18 California does not have any significant interest in applying and interpreting” foreign  
 19 state’s laws in this case. *Id.* at 1167. It would burden a local jury to decide foreign  
 20 plaintiffs’ claims that arise under foreign laws. In contrast, the Western District of New  
 21 York, the Eastern District of Michigan, and the Middle District of Pennsylvania would  
 22 have a strong interest in adjudicating claims that arose from injuries to their residents  
 23 and which concern their state’s laws. It would not be an undue burden for jurors in  
 24 those districts to resolve local controversies.

25 Therefore, considering the factors, the Court concludes that transfer is warranted  
 26 “for the convenience of parties and witnesses, in the interest of justice.” 28 U.S.C. §  
 27 1404(a).

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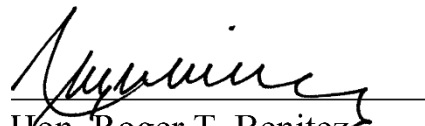
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**CONCLUSION**

The Court severs the individual claims of Plaintiffs Carter, McConnell, and Mundy. Carter's claims are transferred to the U.S. District Court for the Western District of New York. McConnell's claims are transferred to the U.S. District Court for the Eastern District of Michigan. Mundy's claims are transferred to the U.S. District Court for the Middle District of Pennsylvania.

**IT IS SO ORDERED.**

Dated: August 10, 2016

  
Hon. Roger T. Benitez  
United States District Judge